

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WAI HING LAI and WING CHUNG JOSEPH LAU

Appeal 2007-2582
Application 10/800,652
Technology Center 2800

Decided: October 26, 2007

Before: JOSEPH F. RUGGIERO, ROBERT E. NAPPI and
KEVIN F. TURNER, *Administrative Patent Judges.*

TURNER, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1, 2 and 4 through 11. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants disclose an electrical accessory that can be used with conventional electrical appliances. (Specification 1: 16-18). The electrical accessory has portions for receiving an electrical cord from an appliance and for receiving a dis-connectable cord that connects to a power source.

The only independent claim under appeal, claim 1, reads as follows:

1. A safety electrical accessory comprising releasably engageable first and second body members, said first body member including a first receiving portion adapted to be releasably engageable with a plug member of a first electric cord of an electric appliance and a second receiving portion provided with at least two pins protruding therefrom, and said second body member including a first plug member electrically connecting with a second plug member, said first plug member being electrically connectable with an electricity mains supply and said second plug member adapted to be releasably engageable with said first body member, and a securing means for securing said first body member to a surface, wherein said second plug member is provided with at least two apertures sized and shaped to receive said two pins of said second receiving portion and wherein said second plug member is disconnectable from said first body member upon pulling of and/or accidental tripping over said first electric cord.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Sinopoli	US 3,049,688	Aug. 14, 1962
Karabakakis	US 4,647,120	Mar. 3, 1987
Glass	US 6,004,157	Dec. 21, 1999
Lee	US 6,328,581 B1	Dec. 11, 2001
Lau	US 6,568,942 B2	May 27, 2003

The Examiner rejected, under 35 U.S.C. § 103(a),:

claims 1, 2, 5, 6, and 11 as unpatentable over Sinopoli and Lau,
claim 4 as unpatentable over Sinopoli, Lau and Glass,
claim 7 as unpatentable over Sinopoli, Lau and Karabakakis, and
claims 8 through 10 as unpatentable over Sinopoli, Lau and Lee.

Appellants have only appealed the rejection of claims 1, 2, 5, 6, and 11.

Appellants contend that the Examiner erred in indicating that the claimed subject matter would have been obvious. More specifically, Appellants have argued that the Office Action failed to provide “any *teaching* that would lead a person of ordinary skill in the art to make such a modification,” as provided in the rejection. (Br. 5, emphasis in original). Appellants also argue that the teaching or suggestion to make the claimed combination must be found in the prior art, and not in applicant’s disclosure. (Br. 5). Appellants urge that given that the elongated container of Sinopoli is affixed to a flat surface, there would be no need to provide such an apparatus with a releasable cord, since there would be no danger that the elongated container would be pulled off the counter or overturned. (Br. 5).

The Examiner finds that the necessary motivation was supplied and that it would have been obvious to incorporate Lau's releasable cord into Sinopoli's device based on the combined disclosures of Sinopoli and Lau (Answer 6).

We note: Appellants have not addressed the patentability of claims 1, 2, 5, 6 and 11 separately, nor have Appellants addressed the Examiner’s rejections of claims 4, and 7 through 10. Thus, we concern ourselves with representative claim 1.

We affirm.

ISSUE

Have Appellants shown that the Examiner has failed to establish that one skilled in the art would have incorporated Lau's releasable cord into Sinopoli's device to produce a safety electrical accessory as required by claim 1?

FINDINGS OF FACT

1. Appellants disclose an electrical accessory that functions as an electrical extension cord. (Spec. 6, ll. 27-30).

2. The electrical accessory allows for an electrical connection from an appliance to be connected thereto through a plug. (Fig. 1, elements 2, 4, & 6).

3. The electrical accessory has a main body and an electric cord having two plugs. (Specification 7: 5-12; Fig. 1, elements 8, 10, 12, & 14).

4. The main body is designed to be securely attached to a stable fixture through a securing means, which can include a clamp or a suction cup. (Specification 8: 7-13; Fig. 3, element 34).

5. The electric cord connects with the receptacle of the main body and is held in place through an attraction between metallic plates and a metallic member. (Specification 7: 11-26; Fig. 3, elements 18, 20, & 22; Fig. 5, element 24).

6. Appellants' Specification acknowledges that the receptacle and plug of the present invention "are generally similar to that of the receptacle 98 and the plug 6, respectively, disclosed in US Patent No. 6,568,942." (i.e. Lau) (Specification 7: 23-26).

7. Lau discloses that it is often difficult to detach the electric cord of an appliance from the appliance and this can lead to dangerous situations that can produce serious injuries. (Col. 1, ll. 19-29).

8. Sinopoli describes an elongated container which affixes to a flat surface, such as a desk. (Col. 2, ll. 7-9 & 53-57; Figs. 1 & 2; elements 10 & 40).

9. Sinopoli describes that the elongated container is affixed through a suction cup and/or screws or other fasteners. (Col. 2, ll. 43-52; Fig. 2, elements 35 & 37).

10. Sinopoli describes that the elongated container has a series of electrical connectors, connected through internal wires to a conductor, which is connected to an electrical outlet. (Col. 2, ll. 13-42; Fig. 1, elements 20, 21 & 26).

11. The Examiner has acknowledged that Sinopoli does not disclose a releasable engagement of the conductor, connected to an electrical outlet, with the elongated container.

PRINCIPLES OF LAW

The Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellants to overcome the *prima facie* case with argument and/or evidence. *See Id.*

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The analysis need not seek out precise teachings directed to the specific subject matter of the claim but can take into account the inferences and the creative steps that a person of ordinary skill in the art would employ. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007).

The claims on appeal should not be confined to specific embodiments described in the Specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (*en banc*). During *ex parte* prosecution, claims must be

interpreted as broadly as their terms reasonably allow since applicants have the power during the administrative process to amend the claims to avoid the prior art. *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

ANALYSIS

As pointed out by the Examiner, merely because the device is secured, does not mean that it cannot be pulled or turned over to the floor. The elongated container in Sinopoli may be affixed via a suction cup, which is a non-permanent connection. (Finding of Fact 9). If a user were to trip over the conductor, the elongated container could be pulled away from its flat surface. Thus, we cannot agree with Appellants' argument that there would be no danger that the elongated container would be pulled off the counter or overturned. As such, we can find no fault with the motivation supplied in the rejection.

Additionally, Lau also provides for a safer working environment for the user. (Finding of Fact 7). While the creation of a safer working environment may not be explicitly stated in Lau, it is clearly an implicit goal, given its disclosure. "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1332-33 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009 (CCPA 1968)). The tripping hazard identified in Lau can also be identified in the use of the apparatus disclosed in Sinopoli. As such, the teachings of the references themselves provide a motivation for the combination of Sinopoli and Lau.

Appellants also contend that the proffered combination of Sinopoli and Lau would lead one of ordinary skill in the art to plug an appliance with a releasable cord into one of the electrical receptacles of the Sinopoli apparatus and would not lead to the claimed invention. While such a combination could be contemplated, it does not negate the combination provided in the rejection.

CONCLUSION OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1, 2, 5, 6 and 11 and we affirm the Examiner's rejection under 35 U.S.C. § 103(a) as unpatentable over Sinopoli and Lau.

Appellants have chosen not to address the Examiner's rejections of claims 4 and 7 through 10. (Br.4). Thus, we affirm the Examiner's rejection of these claims *pro forma*.

DECISION

The decision of the Examiner is affirmed.

Appeal 2007-2582
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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

tdl/gw

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